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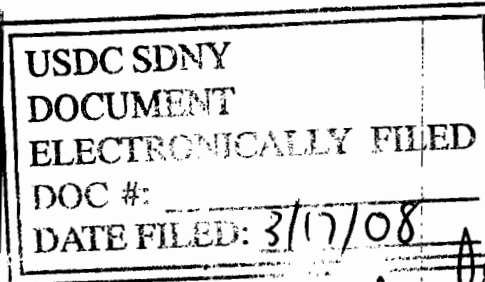
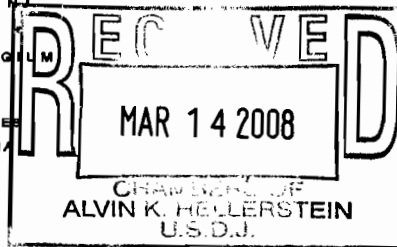
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March 14, 2008

Honorable Alvin K. Hellerstein
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: United States v. Edwin Henriquez
S13 06 Cr. 1014

Dear Judge Hellerstein:

The government has demanded the return of the 3500 material furnished to counsel in advance of the trial in the above-referenced matter. I initially advised the government that I would return the 3500 material after the sentencing, since I anticipate the likelihood that in connection with the sentencing the government will make assertions of "fact" based on what the accomplice witnesses were prepared to testify to, which "facts" may be subject to contradiction by reference to those accomplices' prior statements contained in the 3500 material. Not having the 3500 material would prevent me from meaningfully contesting the government's pre-sentencing submissions, and deprive the Court of relevant information.

The government has stated to me that it has a security concern with respect to the safety of its witnesses if it does not retrieve the 3500 material. Assuming for purposes of discussion that the 3500 material somehow increases the jeopardy of the accomplices¹ if it fell

¹ It is difficult to see how that can be so, since the defendant knows the identity of the four cooperating witnesses, and has known that information for quite some time, without any harm befalling any of them.

*In the transcript
Defense Counsel's motion
representation, the gov't is
motion is denied, up out
prejudice to later
renewal 3/17/08
Alc*

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into the wrong hands, I have represented to the government that the 3500 material will not leave the file drawer in my office, and will not be disclosed or in any way shared with any other person including my client. Accordingly, unless my representations are to be disbelieved, the government's security concerns are fully addressed. Moreover, last week, in a further effort to address the government's security concerns, I proposed the following, which should be regarded as a most reasonable solution: I offered to return the 3500 material now on the condition that it be returned to me for the brief period of time needed to respond to the government's pre-sentencing submissions. The government rejected that proposal, for reasons I fail to understand.

The relevant case law, sparse though it is, does not support the government's demand for the immediate return of the 3500 material. Courts in this Circuit have held that there is no statutory basis for the government to demand the return of 3500 material, and have not ordered it. United States v. Harloff, 826 F.Supp. 675 (W.D.N.Y. 1993), citing with approval Judge Leval's opinion in United States v. Badalamenti, 626 F.Supp. 655 (S.D.N.Y. 1985) to the same effect. In United States v. Williams, 2005 WL 664933 (S.D.N.Y. 2005), the defense was permitted to retain "sensitive" 3500 material until the conclusion of all appellate proceedings (and retain "non-sensitive" 3500 material indefinitely). See also, United States v. Basciano, 2006 WL 2270432 (E.D.N.Y. 2006); United States v. Garcia, 406 F.Supp.2d 304 (S.D.N.Y. 2005).

Because there is no statutory basis for the government to demand the return of the 3500 material, because counsel has a demonstrated need in connection with the upcoming sentencing to retain the 3500 material, and because the government's security concern - - to the extent it has any merit - - is satisfied by counsel's representation of non-disclosure, the government's application should be denied.

Very truly yours,



Alan R. Kaufman

ARK:ma

cc: Marissa Molé, Esq.
Christopher LaVigne, Esq.